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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/912,266 | 07/24/2001 | James E. Fleming | 390054.402 | 4134 |
| 500 | 7590 | 04/06/2004 | EXAMINER | |
| SEED INTELLECTUAL PROPERTY LAW GROUP PLLC | | | GABEL, GAILENE | |
| 701 FIFTH AVE | | | ART UNIT | |
| SUITE 6300 | | | PAPER NUMBER | |
| SEATTLE, WA 98104-7092 | | | 1641 | |

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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| EXAMINER |
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| ART UNIT | PAPER |
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032304

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Commissioner for Patents

Non-Responsive Amendment

1. The reply filed on 12/8/03 is not fully responsive to the prior Office Action because claims have been amended to encompass originally non-elected claims. Specifically, elected claims are drawn to method of detecting viable cells, while non-elected claims are drawn to device and method of determining percentage of viability of cells. Accordingly, it has been determined in this Request for Continued Examination that claims 9-11, 13-16, and 27, as amended, are directed to a new invention that is independent or distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-11, 13-16, and 27, as amended, should be withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Applicant is advised to bring back the claims that were previously under prosecution.

2. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply


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outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (571) 272-0820. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gailene R. Gabel 
Patent Examiner
Art Unit 1641
March 23, 2004


CHRISTOPHER L. CHIN
PRIMARY EXAMINER
GROUP ~~1800~~ 1641